

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION****DOCKET****02-AFC-1C**DATE Nov. 14 2011RECD. Nov. 14 2011

In the Matter of:)	Docket No. 02-AFC-1C
)	
BLYTHE ENERGY PROJECT II)	STAFF'S ANALYSIS
)	AND RECOMMENDATION
)	Regarding the Requested Extension of
)	the Deadline for
CAITHNESS BLYTHE II, LLC)	Commencement of Construction
_____)	(Title 20, Section 1720.3)

INTRODUCTION

The proposed Blythe Energy Project, Phase II, owned by Caithness Blythe II, LLC, (Caithness) is a 520-megawatt project that was certified by the California Energy Commission on December 14, 2005. The proposed facility would be located within the City of Blythe, approximately five miles west of the center of the City.

In October 2009, a petition to amend BEP II was submitted by the project owner that proposes several revisions to the license. On December 1, 2010, the Energy Commission approved a petition to extend the commencement of construction deadline for one year, from December 14, 2010 to December 14, 2011. The extension was granted to allow the project owner time to provide additional information so that staff could complete the analysis on the October 2009 amendment request without having the construction deadline lapse.

On October 12, 2011, the project owner filed a second petition to extend the deadline to commence construction for BEP II. Staff neither supports nor opposes this second petition.

ANALYSIS

Title 20, California Code of Regulations, section 1720.3 provides as follows:

Unless a shorter deadline is established pursuant to Section 25534, the deadline for commencement of construction shall be five years after the effective date of the decision. Prior to the deadline, the applicant may request, and the commission may order, an extension of the deadline for good cause.

BLYTHE II - STAFF'S ANALYSIS

November 14, 2011

Page 2

Under the plain language of section 1720.3, the deadline to commence construction is five years after the effective date of the decision. By operation of law, if construction has not commenced, the certificate for a given project therefore expires on a date certain five years from the date of certification unless the Commission grants an extension for good cause.

Good cause is not defined within the Public Resources Code or in the Commission's regulations, and appears to be a flexible concept subject to the individual facts of a given circumstance. Good cause is "largely relative in [its] connotation, depending upon the particular circumstances of each case" (*R.J. Cardinal Co. v. Ritchie* (1963) 218 Cal.App.2d 124, 144).

As California courts have noted, the nature and extent of the showing necessary to satisfy the good cause requirement for an extension must, of necessity, vary with the circumstances of each case (*Chalco-California Corp. v. Superior Court of Los Angeles County* (1963) 59 Cal 2d 883).

Indeed, the term "good cause" is "not susceptible of precise definition [and] its definition varies with the context in which it is used. (*Zorreno v. Unemployment Ins. Appeals Board* (1975) 47 Cal.App.3d 434, 439)

To preserve certification of a project for which construction has not yet begun within the first five years of project approval, the project owner has the burden to show good cause for an extension. Failure to meet that burden results in the lapse of the project's certification. By force of regulation, section 1720.3 subjects every certification to a five-year term in the absence of any construction activity.

Staff reviewed the original petition filed by Caithness requesting a five-year extension of the construction deadline. Staff has some concerns regarding the information provided by Caithness, particularly regarding the project's plans for interconnection. Staff appreciates that the project owner continues to have difficulties in this area and believes that Caithness should be allowed the opportunity to address the Energy Commission in this regard.

Staff has taken into consideration several factors in its analysis of whether good cause exists. These include whether the Caithness has been diligent in its attempts to begin construction of the facility, whether factors outside Caithness' control have prevented the construction of the project, and a comparison of the amount of time and resources that would have to be spent in processing any required amendments to the project if extension is granted as opposed to the amount of time and resources that would be spent in processing a new Application for Certification (AFC) if the extension were denied.

1. Diligence

The AFC for this project was filed in February 2002, and the Energy Commission granted the license to construct and operate the facility in December 2005. The current estimates by for the earliest possible start of construction for the project according to Caithness would be 2014.

In December 2010, the project was granted a 12 month extension by the Energy Commission in December 2010. The specific purpose of that extension was to allow additional time for the project owner to submit the required information for staff to complete its analysis. Caithness has only recently provided the required information. Questions remain regarding the manner in which the project will connect to the grid, but at this time staff is willing to accept the information provided by Caithness to complete its analysis of the Petition to Amend. Staff notes that the project has had six years with an Energy Commission license during which time it has attempted to get a PPA but has been unable to do so.

Another factor that staff must consider is that it has taken seven years for the project owner to complete a Large Generator Interconnection Agreement (LGIA), which is still pending. The latest Petition to Extend the Deadline to Commence Construction asserts that the seven years it has taken to complete and execute the Large Generator Interconnection Agreement (LGIA) with the California ISO was an unexpected event that has prevented the BEP II from reasonably securing a power purchase agreement (PPA) with a utility. A modified LGIA is expected sometime in November of 2011 and will allow BEP II to actively participate in any future utility RFOs.

This is not to suggest that the project owner has failed to continue to work towards constructing and operating the project. As outlined in the Declaration of Robert Looper, Senior Vice President of Caithness Blythe II LLC, filed on November 8, 2011, the project owner remains committed to continue its efforts to develop the project, and has undertaken certain activities to this end. Staff appreciates that the project owner continues in its desire to construct and operate Blythe II, and believes the project owner should be allowed the opportunity to address the Commission in this regard.

2. Factors outside the project owner's control that have prevented the start of construction

Staff is concerned that the license for the project was granted six years ago, and is also concerned about the justification for delay provided by the project owner. It has taken the project owner eight years to complete the California ISO interconnection process, a rather long time especially for a generator with a queue position as low as the BEP II had (17) when it first entered in 2003. Many other generators have completed the interconnection process and have fully operational projects in less than this eight year

BLYTHE II - STAFF'S ANALYSIS

November 14, 2011

Page 4

window.¹ Asserting that the interconnection agreement process was out of the control of the project owner is not reasonable when a large part of the delay was caused by modifications the project owner made to their project.

Staff does not view this circumstance as being entirely unforeseen or out of the control of the project owner. However, the project owner remains committed to continue its efforts to develop the project, and has undertaken certain activities to this end as outlined in the Declaration of Robert Looper, Senior Vice President of Caithness Blythe II LLC, filed on November 8, 2011.

3. A comparison of the amount of time and resources that would have to be spent in processing any required amendments to the project if extension is granted as opposed to the amount of time and resources that would be spent in processing a new AFC if the extension were denied.

Significant staff resources have gone into this project. Staff conducted a thorough and exhaustive environmental review of Blythe II during the course of the AFC proceeding from the time that the AFC was filed in February 2002 through the granting of the license in December 2005. The project has been overseen by the Energy Commission's compliance unit since that time, and technical staff have worked diligently to resolve issues with the Petition to Amend filed October 23, 2009, and are currently working towards finalizing its analysis to that petition. Staff has a strong interest in ensuring that those projects that are licensed by the Energy Commission are constructed and operated according to the terms and conditions of certification.

Staff also notes that circumstances have changed since the original project was approved in December 2005 that could warrant the filing of a new AFC. The project owner maintains that the project is needed to support of renewable generation. However, it is staff's opinion that the project's location may serve to limit their capabilities to do so. This project is not in an area that needs capacity, and will essentially act as an import in California load centers. It is unlikely that the utilities will look to sign contracts with fossil generators unless those generators are in locations that maximize the value of the generators, locations such as the Los Angeles Basin, San Diego, Fresno and the Greater Bay Areas. The time and resources that would be required by the filing of a new AFC are not insubstantial, however, and ultimately the ability of Blythe II to be built under the terms and conditions of the Energy Commission's

¹ See Colusa Generating Station, 06-AFC-09, joined queue February 2005 – operating; Panoche Energy Center, 06-AFC-5, joined queue December 2004 – operating; Abengoa Mojave Solar, 09-AFC-5, joined queue August 2006 – under construction; Ivanpah Solar, 07-AFC-5, joined queue September 2006 – under construction; Desert Sunlight PV Project, joined queue November 2006 – under construction; Genesis Solar Energy Project, 09-AFC-8, joined queue April 2007 – under construction; Marsh Landing Generating Station, 08-AFC-3, joined queue March 2008 – under construction; Mariposa Energy Project, 09-AFC-3, joined queue April 2008 – under construction.

certification will be determined by the project's ability to compete in the next RFO process. If the information provided by Caithness is correct in this regard, then the project may very well be constructed under the current license if an extension is granted.

CONCLUSION

Appearing before the Energy Commission, Caithness Blythe II, LLC is requesting a five year extension of its deadline to construct the Blythe Energy Project Phase II. Extending the start-of-construction deadline is consistent with the Energy Commission's general interest in the development of facilities it licenses. However, given the above, staff neither supports nor opposes this extension, and submits the matter to the full Commission for consideration.

Date: November 14, 2011

Respectfully Submitted,

Original signed by
Kevin W. Bell
Senior Staff Counsel